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July 6, 2023

VIA ECF/EMAIL

Honorable Lisa G. Beckerman
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Rm. 623
New York, NY 10004-1408

Re: In re: ERBO Properties LLC
Case No. 23-10210 (jointly administered)
July 7, 2023 Discovery Conference In Connection with Amended Disclosure Statement

Dear Judge Beckerman:

As Your Honor is aware, this firm represents 541 W 21 SME LLC (“SME”) in the above-referenced matter (the “Bankruptcy Case”). Kindly accept this letter from SME to apprise Your Honor of certain events over the past several days that may have a bearing on the July 7, 2023 Discovery Conference in Connection with the Amended Disclosure Statement, the July 12, 2023 hearing on the Amended Disclosure Statement and the July 12, 2023 hearing on SME’s request for further stay relief.

SME provides Your Honor with the following:

- 1) On July 3, 2023, Isaac Nutovic, Esq. sent an email to Stephen Selbst, Esq., counsel to G-4 and the undersigned informing us that he is substituting for Scott Markowitz as counsel to the Debtors. A copy of said email is enclosed herewith as Exhibit “A” (the “Nutovic email”). Mr. Markowitz confirmed this fact to the undersigned. Mr Nutovic filed retention pleadings late last night.
- 2) The Nutovic email references a very different course by the Debtors from that referenced in the Debtors’ pending plan or referenced by Mr. Markowitz in prior hearings. No reference was ever made of Mr. Nutovic’s suggested course.

- 3) On July 5, 2023, the undersigned made inquiry of Mr. Nutovic to obtain additional information. A copy of the undersigned's email inquiry is attached hereto as Exhibit "B". Mr. Nutovic has not responded to this email.
- 4) On July 5, 2023, David Moss, Esq. of this office received an email from Avi Rosenfeld, Esq., an attorney holding himself out to be another attorney for the Debtors, who will be seeking emergent relief from the State Court in Kings County to stop the UCC Sale. A copy of Mr. Rosenfeld's email is attached hereto as Exhibit "C".
- 5) Both this office and Mr. Selbst's office warned Mr. Rosenfeld that if he proceeds with such action in State Court that the Debtors and he will be violating this Court's order granting SME limited stay relief, including this Court's retention of jurisdiction relating to the implementation of said order. A copy of the responses is attached hereto as Exhibit "D".

We have not heard from Mr. Nutovic regarding the scheduling of depositions in preparation for the hearing on an Amended Disclosure Statement, if any. Mr. Markowitz did submit a filing that referenced that the Debtors would be relying on the Newmark Appraisal submitted by SME and referenced as witnesses, Hershel Klein, Morris Meisels, Henry Weiss and Sam Jacobs. The latter two are names that have not been mentioned by the Debtors in the past.

We look forward to discussing the above with Your Honor on July 7, 2023 as well as other issues that may arise by that date.

Thank you for your courtesies.

Respectfully,

/s/ Morris S. Bauer

Morris S. Bauer

cc: All counsel (via email)
Isaac Nutovic, Esq. (via email)
Avi Rosenfeld, Esq. (via email)

EXHIBIT A

Bauer, Morris S.

From: inutovic@nutovic.com
Sent: Monday, July 3, 2023 10:56 AM
To: sselbst@herrick.com; Bauer, Morris S.
Subject: Erbo Properties LLC-Migrant Shelter Proposal

Importance: High

Stephen and Morris

I am going to be substituting for Scott Markowitz as counsel for the Debtors.

The Debtor has received a proposed LOI in connection with a triple net 3-year lease (with renewal options) to provide a tier 2 shelter for a non-profit entity subcontracting with NYC's Department of Social Services. Annual net rent is \$10.15 million.

The non-profit did a physical inspection of the site this past week. It has received approval from DSS for build-out plans which were prepared on an emergency basis by Hershel Klein according to specifications provided by the non-profit. Critically, the buildout must be completed and inspected by August 15 so it can be ready for move in on September 1. The LOI is contingent on final approval from NYC on August 15 after the buildout. Our contractor has indicated it can complete the job within the required timeline. A loan for the build-out will be provided by a third party with re-payment to be secured by the lease rentals and contingent on the lease going into effect.

There are still some details which need to be firmed up (such as access to DOB to fast track or waive normal building approvals), but we believe these issues will be solved, because of the City's needs for this kind of housing. Given the short time frame I would like to convene a conference call asap to determine whether, if these issues are solved and the lender is prepared to fund the build-out, your clients will object to the Debtor proceeding with the build-out this week. We will of course be seeking court approval.

Let me know your earliest available times for a call today and I will circulate a dial-in number.

Isaac Nutovic
Law Offices of Isaac Nutovic
(917) 922-7963

EXHIBIT B

Bauer, Morris S.

From: Bauer, Morris S.
Sent: Wednesday, July 5, 2023 9:27 AM
To: inutovic@nutovic.com; sselbst@herrick.com
Subject: RE: Erbo Properties LLC-Migrant Shelter Proposal

Dear Isaac:

Hope you had a good 4th weekend. Thank you for the below email. Sorry I could not hop on a phone call with you and Steve on July 3.

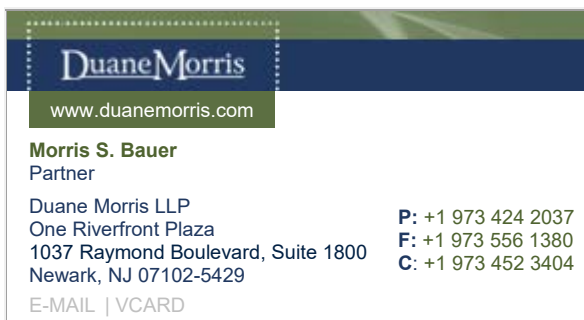
As for the below, we would request the following:

- 1) A copy of the LOI that the Debtor received. Not sure why you would not have attached it in the first instance.
- 2) The name of the non-profit entity and the principals of said entity.
- 3) A copy of the specifications provided by the non-profit entity to Mr. Klein and a copy of the buildout schematics prepared by Mr. Klein.
- 4) The projected cost of buildout and the projected timeline for same.
- 5) Copies of any documents or applications provided to NYC or the NYC Department of Social Services.
- 6) Copy of any loan commitments, including evidence of the financing wherewithal.
- 7) The Debtors intentions in the interim for payment of real estate taxes, monthly payments for G-4, monthly payments for SME, payments to other secured creditors (mechanics liens and pre-petition taxes) and payments to unsecured creditors.

The above information is necessary for us to assess what you provided below.

Thank you,

Mo



From: inutovic@nutovic.com <inutovic@nutovic.com>
Sent: Monday, July 3, 2023 10:56 AM
To: sselbst@herrick.com; Bauer, Morris S. <MSBauer@duanemorris.com>
Subject: Erbo Properties LLC-Migrant Shelter Proposal
Importance: High

Stephen and Morris

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The non-profit did a physical inspection of the site this past week. It has received approval from DSS for build-out plans which were prepared on an emergency basis by Hershel Klein according to specifications provided by the non-profit. Critically, the buildout must be completed and inspected by August 15 so it can be ready for move in on September 1. The LOI is contingent on final approval from NYC on August 15 after the buildout. Our contractor has indicated it can complete the job within the required timeline. A loan for the build-out will be provided by a third party with re-payment to be secured by the lease rentals and contingent on the lease going into effect.

There are still some details which need to be firmed up (such as access to DOB to fast track or waive normal building approvals), but we believe these issues will be solved, because of the City's needs for this kind of housing. Given the short time frame I would like to convene a conference call asap to determine whether, if these issues are solved and the lender is prepared to fund the build-out, your clients will object to the Debtor proceeding with the build-out this week. We will of course be seeking court approval.

Let me know your earliest available times for a call today and I will circulate a dial-in number.

Isaac Nutovic
Law Offices of Isaac Nutovic
(917) 922-7963

EXHIBIT C

Bauer, Morris S.

To: MSBauer@duanemorris.com
Subject: FW: Opposing proposed sale of collateral RE: 541 W 21st St.

From: avi rosenfeld <aviyrosenfeldlaw@gmail.com>
Sent: Wednesday, July 5, 2023 10:40 AM
To: Moss, David G. <DGMoss@duanemorris.com>
Subject: Fwd: Opposing proposed sale of collateral RE: 541 W 21st St.

----- Forwarded message -----

From: avi rosenfeld <aviyrosenfeldlaw@gmail.com>
Date: Wed, Jul 5, 2023 at 10:36 AM
Subject: RE: Opposing proposed sale of collateral RE: 541 W 21st St.
To: <esilverberg@sme-capital.com>
Cc: <dgm@msf-law.com>

Greetings Mr. Eran Silverberg, SME, and Mr. Moss,

Concerning the scheduled sale of collateral on July 10th, 2023 9:30AM affecting collateral belonging to:

ERBO PROPERTIES LLC, KOVA 521 LLC, GOLD MEZZ LLC,

And their Members,

Our Law firm represents the above parties in the above "RE:". This is a warning and invitation that we intend to file an Order to Show Cause Thursday morning, 07/06/2023 at 11:30AM at 360 Adams Street Brooklyn NY at the ex-parte office of the Supreme Court of the State of New York Kings County; asking for a court enforced stay and cancellation of your planned UCC sale and other relief. We will be filing electronically.

Please do not hesitate to contact us. If you or your attorney wishes to oppose the application you can contact the Court or our office. If the Court or assigned Judge offers or requests that both sides appear for argument to oppose the requested stay and relief, we will attempt to inform you so that you or your attorney can participate.

Thank You

Avinoam Y. Rosenfeld
156 Harborview South,
Lawrence, New York 11559
Tel: (516) 547-1717

The documents accompanying this transmission contain information which is confidential or privileged. The information is intended only for the use of the intended recipient. If you are not the intended recipient, any disclosure, copying, distribution or taking of any action in reliance on the contents of this material is prohibited and the documents should be returned to the firm immediately. If you have this transmission in error, please notify us by telephone immediately so that we can arrange for the return of the original documents at no cost to you.

Any Federal tax advice contained herein is not intended or written to be used, and cannot be used by you or any other person, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue code. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Internal Revenue Service. Any written statement contained herein relating to any Federal tax transaction or matter may not be used by any person without the express prior written permission in each instance of a partner of this firm to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed herein.

EXHIBIT D

Bauer, Morris S.

To: MSBauer@duanemorris.com
Subject: FW: Opposing proposed sale of collateral 541 W 21st St.

From: avi rosenfeld <aviyrosenfeldlaw@gmail.com>
Sent: Wednesday, July 5, 2023 1:55 PM
To: Moss, David G. <DGMoss@duanemorris.com>
Subject: Re: Opposing proposed sale of collateral 541 W 21st St.

We intend to proceed tomorrow as previously explained.

There is nothing in this Order which precludes an action against the sale.

Thank You

Avinoam Y. Rosenfeld
156 Harborview South,
Lawrence, New York 11559
Tel: (516) 547-1717

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Any Federal tax advice contained herein is not intended or written to be used, and cannot be used by you or any other person, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue code. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Internal Revenue Service. Any written statement contained herein relating to any Federal tax transaction or matter may not be used by any person without the express prior written permission in each instance of a partner of this firm to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed herein.

On Wed, Jul 5, 2023 at 11:59 AM Moss, David G. <DGMoss@duanemorris.com> wrote:

Avi,

Following our call, we have a bankruptcy court order requiring the auction to take place (attached). Second, has the bankruptcy court permitted you to represent the debtors? If you have such an order from the bankruptcy court, please send it to us.

I believe your actions are contrary to the bankruptcy court order.

Please let us know if you intend to proceed tomorrow in Kings County Supreme Court.

Thank you,

David Moss



From: avi rosenfeld <aviyrosenfeldlaw@gmail.com>
Sent: Wednesday, July 5, 2023 10:40 AM
To: Moss, David G. <DGMoss@duanemorris.com>
Subject: Fwd: Opposing proposed sale of collateral RE: 541 W 21st St.

----- Forwarded message -----

From: avi rosenfeld <aviyrosenfeldlaw@gmail.com>
Date: Wed, Jul 5, 2023 at 10:36 AM
Subject: RE: Opposing proposed sale of collateral RE: 541 W 21st St.
To: <esilverberg@sme-capital.com>
Cc: <dgm@msf-law.com>

Bauer, Morris S.

From: Selbst, Stephen <sselbst@herrick.com>
Sent: Wednesday, July 5, 2023 7:59 PM
To: aviyrosenfeldlaw@gmail.com
Cc: Jason Behfarin (jason@g4dev.com); Robert Palumbo; Robyn Sorid; Halm, Christopher; Makarowitz, Jonathan M.; Kevin J Nash; jzourigui@ingramllp.com; Bauer, Morris S.; Gibson, Michael H.
Subject: Erbo Properties LLC et al. -- Case 23-10201 (LBG)

Mr. Rosenfeld

This firm represents G4 18190 LLC, the construction lender to Erbo Properties LLC in connection with the chapter 11 proceedings pending before Hon. Lisa G. Beckerman in the United States Bankruptcy Court for the Southern District of New York.

We believe that any attempt to seek *ex parte* relief to cancel the proposed UCC sale violates both Judge Beckerman's order, or which both you and your client have actual notice, and the automatic stay provisions of the Bankruptcy Code. As the construction lender to Erbo Properties LLC, G4 18190 LLC has a substantial interest in this matter. Please advise us if the court schedules a hearing on your order to show cause. G4 reserves all rights with respect to any action taken on behalf of your client.

Please copy our firm on any further communications with counsel to 541 W. 21 SME LLC.



Stephen B. Selbst
Partner, Co-chair of Restructuring & Finance Litigation
Herrick, Feinstein LLP
Two Park Avenue | New York, NY 10016
212.592.1405 Office
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